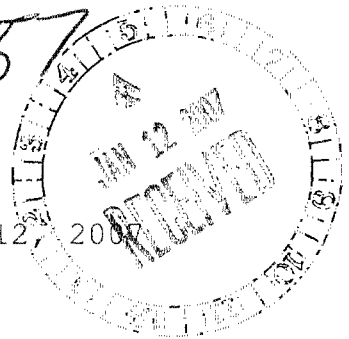


JOHN D. HEFFNER, PLLC
1920 N STREET, N.W.
SUITE 800
WASHINGTON, D.C. 20036
(202) 263-4180
FAX (202) 296-3939
j.heffner@verizon.net

ORIGINAL

BY HAND

January 12, 2007



Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street
Washington, D.C. 20423-0001

**RE: FD No. 34868, Columbus And Greenville
Railway Company - Trackage Rights Exemption
- Kansas City Southern Railway Company**

**ENTERED
Office of Proceedings**

JAN 12 2007

**Part of
Public Record**

Dear Mr. Williams:

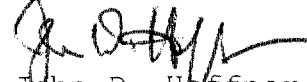
On behalf of Petitioner Columbus and Greenville Railway Company ("CAGY") I am filing in the above-captioned docket an original and ten copies of:

1. A Motion for A Protective Order Pursuant to 49 CFR 1104.14(b);
2. A public version of a Verified Notice of Exemption under 49 CFR 1180.2(d)(7) for nonexclusive local trackage rights over a line of the Kansas City Southern Railway Company; and
3. A highly confidential version of the same Verified Notice of Exemption under 49 CFR 1180.2(d)(7) for nonexclusive local trackage rights over a line of the Kansas City Southern Railway Company.

In addition, I am enclosing ten (10) extra color copies of a map indicating the trackage rights which are the subject of this exemption, a copy of that map on a CD, a computer disk formatted in Word containing this filing, and a check payable to the Board for \$1,000 to cover the applicable filing fee.

Please date stamp and return one copy of this filing.

Sincerely yours,



John D. Heffner

Enclosures

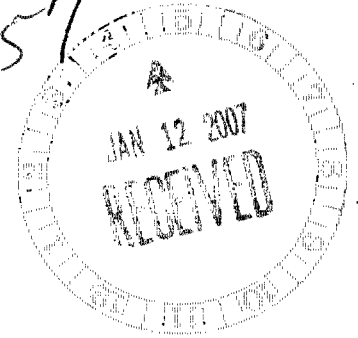
cc: William Mullins, Esq.
David Reeves, Esq.
Mr. Roger Bell

ORIGINAL

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

218457



STB Finance Docket No. 34868

FILED
JAN 13 2007
SURFACE
TRANSPORTATION BOARD

COLUMBUS AND GREENVILLE RAILWAY COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
KANSAS CITY SOUTHERN RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 CFR 1180.2(d) (7)

FILED

JAN 12 2007

SURFACE
TRANSPORTATION BOARD

Respectfully submitted,

Columbus and Greenville
Railway Company

By its attorney,

John D. Heffner
John D. Heffner, PLLC
1920 N Street, NW
Suite 800
Washington, D.C. 20036
(202) 263-4180

ENTERED
Office of Proceedings
JAN 12 2007
Part of
Public Record

Date: January 12, 2007

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

STB Finance Docket No. 34868

COLUMBUS AND GREENVILLE RAILWAY COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
KANSAS CITY SOUTHERN RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 CFR 1180.2(d)(7)

Pursuant to 49 CFR 1180.2(d)(7), the Columbus and Greenville Railway Company ("CAGY") submits this Verified Notice of Exemption for trackage rights and provides the following information:

49 CFR 1180.6(a)(1)(i): A brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed.

Summary

CAGY seeks Board authority to acquire nonexclusive trackage rights over the Tuscaloosa Subdivision of the Kansas City Southern Railway Company ("KCSR") between MP 3.5 West of Columbus (in the vicinity of Artesia, MS), and MP 15.2 at the connection with the BNSF Railway Company at Columbus, MS, a distance of approximately 11.7 miles. These rights provide CAGY direct access to handle rail traffic, between: (a) the site of SeverCorr LLC ("SeverCorr"), located in the Lowndes County Industrial Mega Site, at MP 4.0 near Columbus on the one hand, and (b) on the other hand (1) the Lowndes County Port at MP 13.4, or (2) the BNSF Railway Company connection near MP 15.2 on KCSR's Tuscaloosa Subdivision, or (3) points on CAGY's lines, or (4) interchange points with other carriers located on CAGY in or east of Columbus, MS, as they existed on October 5, 2005.

These trackage rights¹ would enable CAGY to offer rail service to SeverCorr in addition to the service that KCSR would provide.

¹ A redacted copy of the signed trackage rights agreement is attached as Exhibit B. An unredacted, highly confidential copy of the agreement has been filed under seal pursuant to a request for a protective order.

Applicants' names, addresses, and telephone numbers:

Columbus and Greenville Railway Company
201 19th Street North
P.O. Box 6000
Columbus, MS 39703
662-329-7710

Kansas City Southern Railway Company
P.O. Box 219335
Kansas City, MO 64121-9335
816-983-1387

Applicant's counsel to receive correspondence:

For Columbus and Greenville Railway Company
John D. Heffner
John D. Heffner, PLLC
1920 N Street, NW
Suite 800
Washington, D.C. 20036
202-263-4180

For Kansas City Southern Railway Company

David C. Reeves, Esq.
Kansas City Southern Railway Company
P.O. Box 219335
Kansas City, MO 64121-9335
816-983-1387

**49 CFR 1180.6(a)(1)(ii): The proposed time schedule
for consummation of the proposed transaction.**

CAGY proposes to consummate the proposed transaction on or about February 12, 2007, at least thirty days after the filing of this notice.

49 CFR 1180.6(a) (1) (iii): The purpose sought to be accomplished by the proposed transaction.

The purpose of the proposed transaction is to enable CAGY to provide competitive rail service to a new steel mill being constructed by SeverCorr at the aforementioned Lowndes County Industrial Complex. These trackage rights would enable SeverCorr to reach multiple Class I railroads via CAGY (in addition to having direct service from KCSR), which, in turn, would give SeverCorr access to multiple markets for its outbound traffic and more source options for its inbound traffic.

49 CFR 1180.6(a) (5): A list of the State(s) in which any part of the property of each applicant carrier is situated.

CAGY operates in the State of Mississippi. KCSR and its affiliates operate rail lines in the States of Alabama, Arkansas, Illinois, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, and Texas as well as the Country of Mexico.

49 CFR 1180.6(a) (6): Map (Exhibit A). Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other

rail lines in the territory, and the principal geographic points in the region traversed.

A map satisfying this provision is attached hereto as Exhibit A.

49 CFR 1180.6(a)(7)(ii): Agreement (Exhibit B).

Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction. In addition, parties to exempt trackage rights agreements and renewal of agreements described at §1180.2(d)(7) must submit one copy of the executed agreement or renewal agreement with the notice of exemption, or within 10 days of the date that the agreement is executed, whichever is later.

CAGY is furnishing a redacted copy of the trackage rights agreement, which is attached as Exhibit B.

Labor Protection.

As mandated by law, CAGY will provide labor protection as set forth in Norfolk and Western Ry. Co. - Trackage Rights - BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc. - Lease and Operate, 360 I.C.C. 653 (1980).

Environmental and historic reporting requirements.

The proposed transaction is exempt from environmental review under 49 CFR 1105.6(c)(4), which provides that environmental documentation need not be prepared for trackage rights transactions or transactions that will not cause any operating changes that exceed the thresholds established in 1105.7(e)(4) or (5).

In addition, this transaction is exempt from historic review under 49 CFR 1105.8(b)(3) because it will not substantially change the level of maintenance of railroad property.

Respectfully submitted

Columbus and Greenville
Railway Company

By its attorney,



John D. Heffner
John D. Heffner, PLLC
1920 N Street, NW
Suite 800
Washington, D.C. 20036
(202) 263-4180

Dated: January 12, 2007

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

COLUMBUS AND GREENVILLE RAILWAY COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
KANSAS CITY SOUTHERN RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 CFR 1180.2(d)(7)

STB Finance Docket No. 34868

Kansas City Southern Railway Company ("KCSR") has agreed to grant Columbus and Greenville Railway Company ("CAGY") nonexclusive local trackage rights over its Tuscaloosa Subdivision between MP 3.5 west of Columbus, MS (near Artesia, MS), and MP 15.2 at the connection with the BNSF Railway Company at Columbus, MS, a distance of approximately 11.7 miles. These rights provide CAGY direct access to handle rail traffic between: (a) the site of Sever Orr LLC, located in the Lowndes County Industrial Mega Site, at MP 4.0 near Columbus, MS, on the one hand, and (b) on the other hand (1) the Lowndes County Port at MP 13.4, or (2) the BNSF Railway Company connection near MP 15.2 on KCSR's Tuscaloosa Subdivision, or (3) points on CAGY's lines, or (4) interchange points with other carriers located on CAGY in or East of Columbus, MS, as they existed on October 5, 2005.

These trackage rights will be effective on or after February 12, 2007.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in Norfolk and Western Ry. Co.-Trackage Rights-BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.-Lease and Operate, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34868, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on David C. Reeves, Esq., Kansas City Southern Railway Company, P.O. Box 219335, Kansas City, MO 64121-9335, and John D. Heffner, John D. Heffner, PLLC, 1920 N Street, N.W., Suite 800, Washington, DC 20036.

Dated: _____

By the Board

Vernon A. Williams, Secretary

(Seal)

VERIFICATION

STATE OF MISSISSIPPI)
) SS
CITY OF COLUMBUS)

H. Lynn Gibson, being duly sworn according to law, hereby deposes and states that he is authorized to make the Verification, has read the foregoing document, and knows the facts asserted therein are true and accurate as stated, to the best of his knowledge, information and belief.

H. Lynn Gibson

Subscribed and sworn to before me, a Notary Public, in and for the City of Columbus in the State of Mississippi, this 8th day of 2007.

Vernon H. Shugart
Notary Public

My Commission expires:

February 5, 2008

Notary Public State of Mississippi At Large
My Commission Expires: February 5, 2008
Bonded Thru Heiden, Brooks & Garland, Inc.

EXHIBIT A

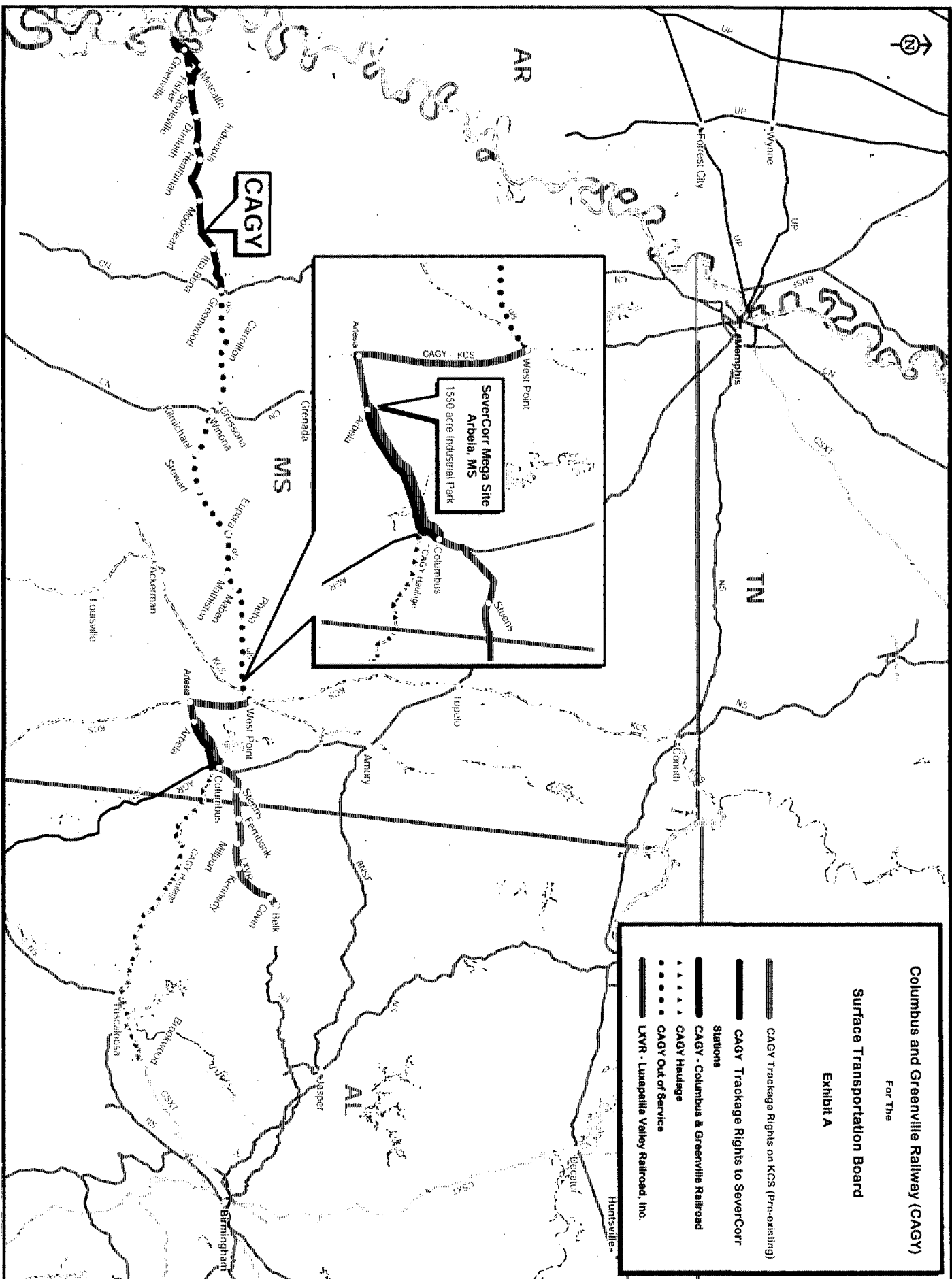


EXHIBIT B

TRACKAGE RIGHTS AGREEMENT

3-3-06

THIS AGREEMENT is made and entered into as of this 3rd day of March, 2006, ("Effective Date") by and between **THE KANSAS CITY SOUTHERN RAILWAY COMPANY**, a Missouri corporation, hereinafter referred to as "KCS" or "Owner", whose address is P.O. Box 219335, Kansas City, Missouri 64121-9335 and the **COLUMBUS AND GREENVILLE RAILWAY COMPANY**, a Mississippi corporation, hereinafter referred to as "CAGY" or "User", whose address is 201 19th Street North, P.O. Box 6000, Columbus, Mississippi 39703.

WITNESSETH:

WHEREAS, User desires to acquire non-exclusive trackage rights over a portion of railroad of Owner on Owner's Tuscaloosa Subdivision between milepost 3.5 west of Columbus, MS and the connection with the BNSF Railway Company at milepost 15.2, a total distance of approximately 11.7 miles, as shown in red on Attachment A hereto (hereinafter referred to as the "Joint Trackage") for the sole purpose of allowing User to handle traffic, between: (a) the site of the SeverCorr steel production facility near Columbus on the one hand, and (b) on the other hand (1) the Lowdnes County Port, or (2) the BNSF Railway Company connection near M.P. 15.2 on KCS's Tuscaloosa Subdivision; or (3) points on the User or (4) interchanges, in or east of Columbus, with other carriers located on User as they existed on October 5, 2005, subject to the terms and conditions contained herein; and

WHEREAS, KCS is agreeable to granting such nonexclusive overhead trackage rights to User as aforesaid, subject, however, to the terms and conditions as hereinafter provided. This Agreement shall not affect or alter the terms of the Joint Facility Agreement between CAGY and KCS's predecessor in interest, the Illinois Central Gulf Railroad Company, dated December 4, 1980, as amended. In the event KCS decides to use a third party to transport KCS line haul traffic between the SeverCorr facility and Artesia or West Point, it will give first consideration to CAGY as a provider of that service, but is not required to use CAGY.

NOW, THEREFORE, in consideration of the mutual covenants herein stipulated to be kept by the parties hereto, it is agreed as follows:

1. General Conditions: The General Conditions, attached hereto as Attachment B are hereby incorporated herein by reference and made a part of this Agreement. Should any conflict exist between the provisions of Attachment B, the General Conditions and the other provisions of this Agreement, the provisions of this Agreement shall govern.

2. Rights Granted: Subject to the terms and conditions herein contained, Owner grants to User the non-exclusive right to use the Joint Trackage for the operation of its equipment in its account over the Joint Trackage solely to allow User to handle traffic, between: (a) the site of the SeverCorr steel production facility near Columbus on the one

hand and (b) on the other hand (1) the Lowndes County Port, or (2) the BNSF Railway Company connection near M.P. 15.2 on KCS's Tuscaloosa Subdivision; or (3) points on the CAGY or (4) interchanges, in or east of Columbus, with other carriers located on the CAGY as they existed on October 5, 2005, subject to the terms and conditions contained herein, in common with Owner and such other railroad company or companies as Owner has heretofore admitted or may hereafter at any time in the future admit to the joint use of all or any part of the Joint Trackage. Any other use of the Joint Trackage by User is prohibited unless authorized in writing by Owner. It is understood and agreed that in addition to the foregoing limitation User shall not have the right, except as specifically provided in this Section 2, to:

- (a) set out, pick up, store or switch upon the Joint Trackage, or any part thereof, except as necessary for handling locomotives, or cars bad ordered enroute, unless otherwise provided in this Agreement or agreed in writing by the operating departments of both parties; or
- (b) serve any industry, team or house track now existing along the Joint Trackage other than the SeverCorr facility located on the north side of the Joint Trackage at approximately M.P. 4, and the Lowndes County Port, which heretofore has not been served by User nor shall it have the right to serve any industry, team or house track hereafter located along the Joint Trackage; or serve any interchange point other than as specifically set forth in this Section 2 without the written consent of KCS; or
- (c) permit or admit any third party to the use of all or any portion of the Joint Trackage, nor under the guise of doing its own business, contract or make any agreement to handle as its own trains, locomotives, or cars over or upon the Joint Trackage, or any portion thereof, the trains, locomotives, and cars of any such third party which in the normal course of business would not be considered as the trains, locomotives, cabooses or cars of User. For purposes of this Agreement, User may use crews and engines of companies of "Affiliates" in performing operations under this Agreement; provided (i) Affiliate shall mean a company which controls, is controlled by or is under common control with or of User and which has at least 80% common ownership with User, (ii) and which does not require authority from the STB or successor agency to perform such operations, (iii) Affiliate shall comply with all terms and provisions of this Agreement and (iv) User shall be responsible for all liability and obligations of any such other company to the same extent User would have had responsibility for compliance with the terms of this Agreement and liability, User would have had if User had performed the operations; or
- (d) construct tracks connecting to the Joint Trackage except as may be necessary for the purpose of connecting to SeverCorr and then only upon approval of Owner as to location of such connecting tracks; or

agreement determined by arbitration. The substitute index shall be the index that most closely matches the structure of the discontinued or altered index. In no event shall any adjustment reduce the charges below the amounts specified in Section 4(a).

In calculating the adjustment to the charges in Section 4(a) all published and any linked index values will be rounded to a tenth of a percent; any linking factors will be rounded to a thousandth of a point; and all rates and charges will be rounded to whole cents. The rounding rule used will be that any fraction less than one-half will be dropped while any fraction equal to or greater than one-half will be rounded up to the next higher value. If the Adjustment Index is re-based, the re-based values will be used in the adjustment calculations. If the previous period's index value was not restated, the parties will restate it with a linking factor. This linking factor will be the ratio of the Adjustment Index, as re-based, divided by the Adjustment Index on the old base for the first period in which the index is published on both bases. The previous period's value in need of restatement will then be multiplied by this linking factor before making current adjustment calculations.

In the event CAGY chooses to exercise its right to renew this Agreement and the application of the U.S. Bureau of Labor Statistics' Consumer Price Index (CPI) to the rates and charges in this section, at the same times the Index of Railroad Material, Prices and Wage Rates for Class I railroads, Western District were applied from January 7, 2007 to the date of the commencement of the first renewal term, would have resulted in higher rates and charges at the beginning of the renewal term, then the initial charges at the beginning of the first renewal term shall be the amounts calculated using the CPI. If a second renewal period is elected by CAGY, the charges will be adjusted in the same manner except the CPI will be applied from January 7, 2007 to the date of the commencement of the second renewal term. After the initial charge in each renewal period is determined, it shall be adjusted as provided above using the Index of Railroad Material, Prices and Wage Rates for Class I railroads, Western District for the remainder of the renewal term. In no event shall any adjustment under this section reduce the rates and charges below those contained in this Section 4.

Catastrophic expense, such as but not limited to acts of third parties, floods, earthquakes, act so God, etc., resulting in damage to the Joint Trackage in an amount in excess of [REDACTED] in any one occurrence shall be billed in addition to the charges in Section 4(a) and apportioned on the basis of the parties annual Car Mileage Proportion as outlined in Section 1 of Exhibit "B" of this Agreement. Expenses for derailments or accidents involving User trains, crews or locomotives shall be considered catastrophic expenses but the term shall not include expenses not involving or caused by User's crews, trains or locomotives.

- (e) handle any cars on or over the Joint Trackage which have a gross weight in excess of the applicable weight limitations contained in the applicable timetable; or

CAGY shall obtain appropriate authority from the KCS dispatcher prior to entering on the Joint Trackage and shall promptly notify the KCS dispatcher once CAGY's crew has cleared the Joint Trackage.

3. Mileage and Per Diem: User shall be responsible for all mileage and per diem charges accruing on cars in User's account on the Joint Trackage and User shall report and pay the same directly to the Owners of such cars. Except as may be specifically provided for in this Agreement, nothing herein contained is intended to change the practices between the parties related to interchange of traffic between the parties or with other carriers on or along the Joint Trackage.

4. Compensation: In consideration of Owner agreeing to the grant of these trackage-rights to User, User agrees to:

- (a) pay to KCS for each revenue loaded car handled over the Joint Track pursuant to this Agreement:

- (i) [REDACTED] for each revenue loaded car transported to the SeverCorr site; other than those transferred from barges at the Port of Columbus and subsequently delivered by User to the SeverCorr site; and

- (ii) [REDACTED] for each revenue loaded car transferred from barges at the Port of Columbus and subsequently delivered by User to the SeverCorr site; and

- (iii) [REDACTED] for each revenue loaded car transported from the SeverCorr site, except steel products or hazardous materials; and

- (iv) [REDACTED] for each revenue loaded car of steel products or STCC 48 or 49 products shipped from the SeverCorr site or STCC 48 or 49 products shipped to the SeverCorr site.

- (b) The charges contained in Section 4(a) shall be adjusted annually on each July 1st commencing July 1, 2007 based on the percentage change from the first quarter of the 2006 Adjustment Index to the first quarter of 2007 Adjustment Index. Subsequent year's changes also shall be made on the basis of subsequent year-to-year changes in the Adjustment Index pursuant to this Agreement.

The "Adjustment Index" shall be the Index of Railroad Material, Prices and Wage Rates for Class I railroads, Western District or its successor index, or, if no successor index exists, and index agreed upon by the parties, or failing

REDACTED

- (c) Expenses incurred by Owner in the issuance of time tables made necessary solely by the changes in operation of trains of User over the Joint Trackage. Also, Owner's costs for any rule books, switch keys and similar items furnished by Owner to User.

(d)

REDACTED

5. **Insurance** User shall, at its own sole cost and expense, procure and maintain in effect the following kinds of insurance commencing as of the first day of User operations over the Joint Trackage and promptly pay when due all premiums for that insurance. Upon the failure of User to maintain insurance as provided herein, User shall have the right, after giving User ten (10) days written notice, to obtain such insurance and User shall promptly reimburse KCS for that expense. The following minimum insurance coverage shall be kept in force during the term of this Lease:

Comprehensive Railroad Liability insurance providing coverage for bodily injury, including death, personal injury and property damage with a combined single limit of at least \$10,000,000.00 each occurrence or claim and a general aggregate limit of at least \$10,000,000.00. This insurance shall contain Broad Form Contractual Liability covering the indemnity provisions contained in this Lease, severability of interests and name KCS as an additional insured with respect to all liabilities arising out of User's obligations to KCS in this Agreement.

6. **Service Coordination:** In order to coordinate service on the Joint Line, KCS will establish a service committee "Service Committee" including transportation officers of KCS and User and if possible any other entities which have access to the Joint Trackage. The Service Committee shall meet once every six months to discuss problems regarding operations over the Joint Trackage and possible solutions. Any changes to operations or access to the Joint Trackage must be approved by KCS. Either party shall have the right to call an emergency conference of the Service Committee, should the quality of operations over the Joint Trackage warrant. The parties agree to negotiate in good faith to resolve any outstanding issues.

7. **Maintenance:** Subject to the provisions of Section 4.b. and 4.c., Owner shall at its cost maintain the Joint Trackage so as to be in compliance with the requirements of the

Track Safety Standards set forth by the Federal Railway Administration for FRA Class 1 track.

8. **Effective Date:** This Agreement shall become effective upon the date that all necessary governmental consents, approvals and authorities is effective. This Agreement shall continue in force and effect for an initial term of [REDACTED]. Thereafter, CAGY shall have the right to renew the term of this Agreement for up to two additional terms of [REDACTED] each, provided is gives KCS written notice of its intent to renew at least six (6) months prior to the expiration of the initial term or the first renewal term. Owner shall have the right to cancel this agreement at any time on ninety (90) days written notice provided User does not use the Joint Track for a period of one (1) year.

9. **Termination.**

REDACTED

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers thereunder duly authorized the day and year first above written.

THE KANSAS CITY SOUTHERN
RAILWAY COMPANY

By: *Don Ziden*

Title: *V.P. Sales and Marketing*

COLUMBUS AND GREENVILLE
RAILWAY COMPANY

By: *Roger D. Beale*

Title: *President - C&G*

Attachment A

MAP

Attachment B

GENERAL CONDITIONS

Section 1. DEFINITIONS

1.1 "Agreement" shall mean that certain agreement to which this Exhibit "B" is appended.

1.2 "Joint Trackage" shall mean the track structure of Owner as described in the Agreement including necessary right-of-way and all appurtenances thereof, including but not limited to signals, signal systems, communications, rail and fastenings, switches and frogs complete, bumpers, ties, ballast, roadbed, embankment, bridges, trestles, culverts and other structures or things necessary for support of and entering into construction thereof, and if any portion thereof is located in a thoroughfare, the terms shall include pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing material at vehicular crossings of tracks, culverts, drainage facilities, crossing warning facilities, and all Changes in and/or Additions to (as that term is hereinafter defined), thereto now or in the future located as are required or desirable for the operation of the trains of the parties hereto.

1.3 "Equipment" shall mean trains, locomotives, cars, vehicles, and machinery, which are capable of being operated on railroad tracks, or operated on right-of-way for purpose of the maintenance or repair thereof.

1.4 "Light Engines" shall mean one or more locomotive units not coupled to cars.

1.5 "Annual" shall mean a calendar year.

1.6 "Car Mileage Proportion" shall mean the car miles operated by a party divided by the total car miles operated by all parties using the Joint Trackage during the same time period. Such car miles shall not include switch movements in setting out and picking up cars at intermediate stations. For the purposes of computing such Car Mileage Proportion, trains, locomotives and cars engaged in work service pertaining to maintenance or operation of and Changes in and/or Additions to the Joint Trackage shall not be counted. Light Engines shall be counted for car mile purposes.

Section 2. MAINTENANCE. ADDITIONS. OPERATION. AND CONTROL

2.1 If any additional switches or additional trackage are required to access the SeverCorr facility, Owner will upon receipt of sufficient funds from User to construct such connections and trackage located on Owner's right of way, construct such switches and trackage to the connection with trackage located on the SeverCorr plant site. Payment by User of funds for any such construction must be received by Owner before construction will be commenced.

2.2 The construction, maintenance, repair, and renewal of the Joint Trackage shall be under the exclusive direction and control of Owner, other than as specifically provided in this Agreement. Owner shall make any Changes in and/or Additions to the Joint Trackage, which may be required by law, and progressively during construction these shall become part of the Joint Trackage. Owner may make any Changes in and/or Additions to the Joint Trackage, which Owner deems necessary or desirable for the safe, efficient, and economical use of the Joint Trackage by the parties, and these shall progressively during construction become part of the Joint Trackage. User may request Changes in and/or Additions to the Joint Trackage which User shall deem necessary or desirable for the safe, efficient, and economical use of the Joint Trackage by the parties, and Owner shall, if it concurs, construct the same upon such terms and conditions as may be agreed upon and they shall become part of the Joint Trackage.

2.3 The management and operation of the Joint Trackage shall be under the exclusive direction and control of Owner. Owner shall have the unrestricted power to change the management and operations on and over the Joint Trackage as in its judgment may be necessary, expedient, or proper for the operations thereof herein intended.

2.4 Owner shall employ all persons necessary to construct, operate, maintain, repair, and renew the Joint Trackage, other than as specifically provided in the Agreement. Owner shall be bound to use only reasonable and customary care, skill, and diligence in the construction, operation, maintenance, repair, and renewal of the Joint Trackage and in managing same and User shall not, by reason of Owner's performing or failing or neglecting to perform any operation, maintenance, repair, renewal, or management of the Joint Trackage, have or make against Owner any claim or demand for any loss, damage, destruction, injury, or death whatsoever resulting therefrom. User shall be given the same advance notice of maintenance plans and schedules as is provided to Owner's personnel.

2.5 User, at its expense, shall install and maintain upon its Equipment such equipment, radios, or devices as may now or in the future be necessary or appropriate, in the reasonable judgment of Owner, for operation of trains upon the Joint Trackage.

2.6 If the use of the Joint Trackage shall at any time be interrupted or traffic thereon or there over be delayed for any cause, neither party shall have or make any claim against the other for loss, damage, or expense of any kind, caused by or resulting from such interruption or delay and the matter shall be referred to the Service Committee.

2.7 Each party shall be responsible for furnishing, at its own expense, all labor, fuel, and train supplies necessary for the operation of its own trains over the Joint Trackage. In the event a party hereto does furnish such labor, fuel, or supplies to another party hereto, the party receiving same shall promptly, upon receipt of billing therefor, reimburse the party furnishing same for its reasonable costs thereof.

2.8 The operation by User on or along the Joint Trackage shall at all times be in accordance with the rules, instructions, and restrictions of Owner, but such rules, instructions, and restrictions shall be reasonable, just, and fair between all parties using the Joint Trackage and shall not unjustly discriminate against any of them.

2.9 User shall be responsible for the reporting and payment of any mileage, per diem, use, or rental charges accruing on cars and equipment in User's account on the Joint Trackage. Except as may be specifically provided for in the Agreement, nothing herein contained is intended to change practices with respect to interchange of traffic between the parties or with other carriers on or along the Joint Trackage.

2.10 All employees of User engaged in or connected with the operations of User on or along the Joint Trackage shall be required to pass periodic examinations on the rules of Owner related to the Joint Trackage, provided, with respect to such examinations that, upon request of User, Owner shall qualify one or more of User's supervisory officers on said rules and such supervisory officer or officers so qualified shall examine all employees of User engaged in or connected with User's operations on or along the Joint Trackage. Pending qualification of train and engine crews of User, Owner shall furnish a pilot or pilots, at the expense of User, as deemed necessary by Owner to assist in operating trains of User over the Joint Trackage.

2.11 If any employee of User shall neglect, refuse, or fail to abide by Owner's rules, instructions, and restrictions governing the operation on or along the Joint Trackage, such employee shall, upon written request of Owner, be prohibited by User from working on the Joint Trackage. If either party shall deem it necessary to hold a formal investigation to establish such neglect, refusal, or failure on the part of any employee of User, then upon such notice presented in writing, Owner and User shall promptly hold a joint investigation in which all parties concerned shall participate and bear the expense for its officers, counsel, witnesses, and employees. Notice of such investigations to employees of User shall be given by User's officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between User and its employees. If, in the judgment of Owner, the result of such investigation warrants, such employee shall, upon written request of Owner, be withdrawn by User from service on the Joint Trackage, and User shall release and indemnify Owner from and against any and all claims and expenses because of such withdrawal.

If the disciplinary action is appealed by an employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on the Joint Trackage by reason of such occurrence.

2.12 If any Equipment of User is bad ordered en route on the Joint Trackage and it is necessary that it be set out, such Equipment shall, after being promptly repaired, be promptly picked up by User. Unless otherwise agreed, Owner may, upon request of User and at User's expense, furnish the required labor and material and perform light repairs to make such bad ordered Equipment safe for movement. The employees and equipment of Owner while in any manner so engaged or while en route to or returning to Owner's terminal from such an assignment shall be considered Sole Employees (as hereinafter defined) of User and Sole Property (as hereinafter defined) of User. However, should Owner after repairing such Equipment for User, move directly to perform service for

Owner's benefit rather than return to Owner's terminal, then User's exclusive time and liability will end when Owner's employees depart for work to be performed for Owner's benefit. In the case of such repairs by Owner to freight cars in User's account, billing therefor shall be in accordance with the Field and Office Manuals of the Interchange Rules adopted by the Association of American Railroads, hereinafter called "Interchange Rules," in effect at the date of performance of the repairs. Owner shall then prepare and submit billing directly to and collect from the car owner for car-owner responsibility items as determined under said Interchange Rules, and Owner shall also submit billing to and collect from User any charges for repair to freight cars that are User's car-owner responsibility.

2.13 If Equipment of User shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, such that wrecking service is required to clear the Joint Trackage, Owner shall, unless otherwise agreed, arrange for such service. Such wrecker service shall be at User's expense unless otherwise provided for in allocation of liability in Section 5 of these General Conditions.

2.14 In the event Equipment of User shall be forced to stop on Joint Trackage, and such stoppage is due to insufficient hours of service remaining among User's employees, or due to mechanical failure of User's Equipment, or any other cause not resulting from an accident or derailment, and such Equipment is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Joint Trackage, or if in emergencies, crippled or otherwise defective freight cars are set out of User's trains on the Joint Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may be necessary to haul, help or push such Equipment, or to properly move the disabled Equipment off the Joint Trackage. The reasonable costs and expenses of rendering such assistance shall be at User's expense.

2.15 User shall pay to Owner reasonable expenses incurred by Owner in the issuance of timetables made necessary solely by changes in the running time of the trains of User over the Joint Trackage. If changes in running time of trains of Owner or third parties, as well as those of User, require the issuance of timetables, then User shall pay to Owner that proportion of the expenses incurred that one bears to the total number of parties changing the running time of their trains. If changes in running time of trains of Owner or third parties, but not those of User, require the issuance of timetables, then User shall not be required to pay a proportion of the expenses incurred in connection therewith.

Section 3 **BILLING, DEFAULT**

3.1 User shall provide Owner with a list containing for each car the car mark, car number, commodity and amount due under this Agreement, within fifteen (15) days of the end of each calendar month during the term of this Agreement. In the event User fails to provide the list by the time specified herein or the list provided by User is inaccurate, User shall pay an additional [REDACTED] for each car which should have been included on the list if the list is not provided in a timely manner or if an incorrect list is provided for each car omitted from the list or for which the information required in this

subsection is inaccurate. User shall pay to Owner at the Office of the Treasurer of Owner or at such other location as Owner may from time to time designate, all the compensation and charges of every name and nature which in and by the Agreement User is required to pay in lawful money of the United States within thirty (30) days after the rendition of bills therefor.

3.2 Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, but shall be paid subject to subsequent adjustment; provided no exception to any bill shall be honored, recognized, or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three (3) years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or, or (ii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability is established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the STB or retroactive adjustment of wage rates and settlement of wage claims.

3.3 So much of the books, accounts, and records of each party hereto as are related to the subject matter of the Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto.

3.4 Should any payment become payable by Owner to User under the Agreement, the provisions of Section 3.1 through 3.3 of these General Conditions shall apply with User as the billing party and Owner as the paying party.

3.5 Should User fail to make any payment when due which User is obligated to make under the Agreement, or fail in any other respect to perform as required under the Agreement, and such default shall continue for a period of sixty (60) days after notice in writing of such default is given by Owner to User, Owner may at its election exclude User from the use of the Joint Trackage. Thereupon User shall surrender to Owner all said Joint Trackage and shall have no claim or demand upon it, by suit at law or otherwise, on account of said exclusion, provided that failure to make any payment which is the subject of arbitration or litigation between the parties shall not be deemed, pending the decision in such arbitration or litigation, cause of forfeiture hereunder.

Owner may waive such default, but no action of Owner in waiving any default shall affect any subsequent default of User or impair any rights of Owner resulting therefrom.

Section 4. COMPLIANCE WITH LAWS

4.1 With respect to operation of Equipment on and over the Joint Trackage, each party shall comply with all applicable laws, rules, regulations, and orders promulgated by any municipality, board, commission, or governmental agency having jurisdiction there over and, if any failure on the part of any party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against another party, such other party shall give prompt notice to the failing party and the failing party shall promptly reimburse and indemnify the other party for such fine, penalty, cost or charge, and all expenses and

attorneys' fees incurred in connection therewith, and shall, upon request of the other party, defend such action free of cost, charge, and expense to the other party.

4.2 User agrees to comply fully with all applicable federal, state, and local laws, rules, regulations, orders, decisions and ordinances (hereinafter referred to as "Standards") concerning "hazardous waste" and "hazardous substances" as defined in the Standards. User covenants that it shall not treat or dispose of on the Joint Trackage "hazardous substances" or "hazardous waste." User further agrees to furnish Owner (if requested) with proof, satisfactory to Owner that User is in such compliance.

In the event any accident, derailment or wreck (hereinafter called "derailment") involving cars on a train operated by User carrying hazardous materials, substances or wastes, as defined pursuant to Federal or State Law (hereinafter called "Hazardous Materials") shall occur on any segment of the Joint Trackage, any report required by Federal, State or local authorities shall be the responsibility of User. User shall also advise the owner/shipper of the Hazardous Materials involved in the derailment and Owner immediately.

Owner shall assume responsibility for cleaning up any release of such Hazardous Materials from User's cars in accordance with all Federal, State, or local regulatory requirements. User shall have the right to have representatives at the scene of the derailment to observe and provide information and recommendations concerning the characteristics of Hazardous Materials release and the cleanup effort. Such costs shall be borne in accordance with Section 5 of these General Conditions.

If a Hazardous Materials release results in the contamination of real property or water adjacent to Owner's right-of-way, Owner shall assume responsibility for emergency cleanup conducted to prevent further damage. User shall be responsible for performing cleanup thereafter. Any costs associated with cleaning up real property or water adjacent to Owner's right-of-way contaminated by Hazardous Materials shall be borne in accordance with Section 5 of these General Conditions.

If Hazardous Materials must be transferred to undamaged cars, User shall perform the transfer, PROVIDED, HOWEVER, that if the Hazardous Materials are in damaged cars that are blocking the Joint Trackage, Owner, at its option, may transfer the Hazardous Materials. Transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

4.3 The total cost of clearing a derailment, cleaning up any Hazardous Materials released during such derailment, and/or repairing the Joint Trackage or any other property damaged thereby shall be borne by the party or parties liable therefor in accordance with Section 5 of these General Conditions.

4.4 In the event of release of Hazardous Materials caused by faulty equipment or third parties, cleanup will be conducted as stated in Sections 4.2 and 4.3 of these General Conditions at the sole cost of the party responsible.

Section 5. LIABILITY

5.1 For the purpose of this Section 5, the following definitions shall apply:

"Loss or Damage" shall mean without limitation all claims, liability, cost, and expense of every character including amounts paid under any State or Federal compensation law incident to loss or destruction of or damage to property and injury to and death of persons arising from the performance or existence of the Agreement.

"Joint Employees" shall mean one or more officers, agents, employees, or contractors of Owner while actually engaged in maintaining, repairing, constructing, renewing, removing, inspecting, or operating the Joint Property or in making Changes in and/or Additions thereto for the benefit of all of the parties hereto, or while preparing to engage in, en route to or from, or otherwise on duty incident to performing such service. Such officers, agents, employees, or contractors shall not be deemed "Joint Employees" while en route from the performance of such work as hereinbefore described to perform service for the benefit of less than all of the parties hereto.

"Joint Property" shall mean the Joint Trackage and all Equipment while engaged in maintaining, repairing, constructing, renewing, removing, inspecting, or operating the Joint Trackage or in making Changes in and/or Additions thereto for the benefit of all the parties hereto, or while preparing to engage in, en route to or from, or otherwise incident to performing such service. Such Equipment shall not be deemed "Joint Property" while en route from the performance of such work as hereinbefore described to perform service for the benefit of less than all of the parties hereto.

"Sole Employees" and "Sole Property" shall mean one or more officers, agents, employees, contractors, or Equipment, while engaged in, en route to or from, or otherwise on duty incident to performing service for the benefit of one or more, but fewer than all, of the parties hereto shall, for the purpose of this Section 5, be considered the Sole Employees and/or the Sole Property of such party or parties. Pilots furnished by Owner to assist in operating Equipment of User shall be considered the Sole Employees of User. All such officers, agents, employees, contractors, or Equipment, while engaged in, en route to or from, or otherwise incident to repairing Equipment, rerailing, or clearing wrecks or derailments or engaged in the repair or renewal of the Joint Property subsequent to any such wreck or derailment shall, for the purpose of this Section 5, be deemed the Sole Employees and/or Sole Property of the party bearing the cost of repair or of the other Loss or Damage of the wreck or derailment, or if more than one party is bearing the cost of the repair or of the other Loss or Damage, the cost shall be borne equally by such parties. Such officers, agents, employees, contractors, or Equipment while en route from performing such repair, rerailing, or clearing of wrecks or derailments or renewing the Joint Property to perform another type of service shall not be deemed to be performing service incident to the instant repair, rerailing, or clearing of a wreck or derailment.

5.2 As between the parties hereto only, each party shall bear all cost of Loss or Damage to its Sole Employees, patrons, invitees, and others on its Equipment, or on or about the Joint Property in transaction of business for or with such party, its Sole Property, or property in its care, custody, or control, except when the Loss or Damage is

caused by the acts or omissions, negligent or otherwise, of the Sole Employees and/or Sole Property of one or more other parties hereto, with or without the concurring acts or omissions of Joint Employees and/or Joint Property, in which event the party whose Sole Employees and/or Sole Property caused the same shall bear all of the costs, or equally if more than one party's Sole Employees and/or Sole Property shall have caused the same.

Loss or Damage to third parties, Joint Employees, or Joint Property caused by the acts or omissions, negligence or otherwise of Sole Employees and or Sole Property of one or more of the parties hereto, with or without the concurring acts or omissions of Joint Employees and/or Joint Property, shall be borne by the party whose Sole Employees and/or Sole Property caused the same, or equally if more than one party's Sole Employees and/or Sole Property shall have caused the same. Loss or Damage to third parties, Joint Employees, or Joint Property involving only Joint Employees, Joint Property, or occurring in such a way that it cannot be determined how such Loss or Damage came about shall be apportioned equally between the parties; provided, however, as to this subsection, that loss or damage occurring when a train, engine or cars of only one party are involved shall be borne entirely by party whose train, engine or cars are so involved.

5.3 It is understood and agreed that a number of vehicular and pedestrian crossings of the Joint Trackage presently exist, or may be constructed. User agrees to accept all vehicular and pedestrian crossings in whatever condition they may be during the term of the Agreement and will not assert any claim, demand, or cause of action against Owner and will hold Owner harmless from any claim, demand, or cause of action arising out of any vehicular or pedestrian crossing accident on the Joint Trackage in which the engines, cars, or train of a User only is involved.

5.4 For the purpose of this Section 5:

5.4.2 Equipment of any third party railroad company or companies being detoured over the Joint Trackage and all persons, other than Joint Employees engaged in moving such Equipment, shall be considered the Equipment and employees of the party hereto under whose detour agreement or other auspices such movement is being made.

5.4.1 Equipment and other property being handled for or used by any party hereto shall, unless Joint Property, be considered the Sole Property of that party for purposes of this Section

5.4.2 Each party hereto agrees that the acts and decisions of the party hereto performing any management, maintenance, repair, renewal, removal, improvement, operation, or similar function of or for the Joint Property shall be deemed acts and decisions of a Joint Employee.

5.5 Each party hereto shall have the right to settle, or cause to be settled for it, all claims for damages for which such party shall be liable under the provisions of this Section 5 and to defend or cause to be defended all suits for recovery of any such damages.

In case a suit shall be commenced against either party hereto for or on account of damages for which the other party hereto is solely or jointly liable under the provisions of this Section 5, the party so sued shall give notice to such other party of the pendency of such suit and thereupon such other party may assume or join in the defense of such suit.

In the event that both of the parties shall be liable hereunder for any damages and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties so jointly liable therefor, release from liability shall be taken for and in the name of both parties so liable. In the event of any settlement in excess of [REDACTED], the settling party shall notify the other party prior to settlement. Failure of the settling party to so notify the other party prior to settlement shall not relieve the other party of its obligation under the settlement agreement, so long as the settling party's failure to notify was unintentional.

If a judgment shall be recovered against and satisfied by one party involving a liability which should under the Agreement be borne entirely or participated in by the other party, then all expenses of whatsoever nature, including costs and fees connected with such judgment and with the prosecution of the suit upon which it was based, shall be settled between the parties in strict accordance with the provision of the Agreement and the party against which such judgment shall have been recovered shall be promptly reimbursed by such other party to the extent to which the latter is indebted.

Section 6. ARBITRATION

6.1 If at any time a question or controversy shall arise between the parties hereto in connection with this Agreement, other than a controversy having a total amount in dispute of more than \$500,000 or failure of User to make payments when due, upon which the parties cannot agree, such question or controversy shall be resolved exclusively as follows:

6.1.1 First, the parties shall try in good faith to settle the dispute between themselves, without the intervention of any other person or agency. However, if it appears to either party that the parties are unable to resolve the dispute themselves, then either party may at any time elect to invoke mediation as set forth below.

6.1.2 Second, and as a prerequisite to any further dispute resolution procedure, either party may submit the dispute to mediation in which both parties must participate.

- i) Mediation shall be initiated by written notice from one party to the other, setting forth the nature of the dispute.
- ii) Following receipt of written notice, the parties shall have 30 days to agree upon a mediator and a time and place for the mediation session.
- iii) If the parties fail to so agree within 30 days, then the mediation shall be administered by the American Arbitration Association ("AAA") under its Commercial Mediation Rules.

- iv) If, after participating in at least one mediation session, it appears to either party that mediation will not resolve the dispute, then either party may invoke arbitration as set forth below.

6.1.3 Third, and as the final dispute resolution procedure, either party may submit the dispute to arbitration administered by the AAA in accordance with its Commercial Arbitration Rules (including the Emergency Interim Relief Procedures), and both parties must participate in such arbitration.

- i) If the dispute involves a total amount of less than \$100,000, then there shall be one neutral arbitrator; otherwise, there shall be three neutral arbitrators. There shall be a tape or stenographic record of any arbitration hearing conducted by three neutral arbitrators.

- ii) The place of arbitration shall be in a neutral location or if the parties are unable to agree, it shall be in Washington, D.C..

- iii) The parties acknowledge that this agreement evidences a transaction involving interstate commerce; therefore, the Federal Arbitration Act shall govern the interpretation, enforcement and proceedings pursuant to this arbitration clause in this agreement.

- iv) Consistent with the expedited nature of arbitration, each party will, upon the written request of the other party, within 30 days of receipt of the request, provide the other with copies of documents relevant to the issues raised by any claim, counterclaim, or defense. Any dispute regarding discovery shall be determined by the arbitrator(s), which determination shall be conclusive. All document discovery shall be completed within 60 days following the appointment of the arbitrator(s).

- v) At the request of a party, the arbitrator(s) shall have the discretion to order examination by deposition of witnesses to the extent the arbitrator(s) deems such deposition relevant and appropriate. Depositions should be limited to a maximum of 3 per party, and should be held within 30 days of the making of a request, unless the arbitrator(s) for good cause determines otherwise. All deposition objections are reserved for the arbitration hearing except for objections based on privilege and proprietary or confidential information.

- vi) The arbitrator(s) will have no authority to award consequential, incidental punitive or other damages not measured by the prevailing party's actual damages, except as may be specifically authorized by statute.

- vii) Any monetary award may, at the discretion of the arbitrator(s), include pre-award interest at the rate then provided by Missouri law.

- viii) The arbitrator(s) shall allocate the arbitrator(s)' compensation and the administrative fees of the arbitration between the parties. Except for such compensation and fees, each party shall bear its own costs.

- ix) The award shall be in writing, shall be signed by a majority of the arbitrators, and shall include a statement of the reasons for the disposition of each claim.

- x) Except as may be required by law, neither the parties nor any arbitrator(s) shall disclose the existence, content or results of any arbitration hereunder without the prior written consent of both parties.

xi) Unless an appeal is permitted and is taken as set forth below, the award shall be final and binding, and judgment may be entered by a court having jurisdiction thereof.

xii) Within 30 days of receipt of any award in excess of the total amount of \$1,000,000 against any one party, either party may notify the AAA of an intention to appeal to a second arbitral tribunal, constituted in the same manner as the initial tribunal. The appeal tribunal shall consider the first arbitration hearing record, any new written briefs and oral arguments of the parties, but not any other evidence. The appeal tribunal shall be entitled to affirm the initial award, modify or set aside the initial award, or substitute a new award for the initial award; however, the appeal tribunal shall not modify, set aside or replace the initial award except for clear errors of law or because of clear and convincing factual errors. The award of the appeal tribunal shall be final and binding, and judgment may be entered by a court having jurisdiction thereof.

6.2 The books and papers of all parties, as far as they relate to any matter submitted for arbitration, shall be open to the examination of the arbitrator(s).

Section 7. GOVERNMENTAL APPROVAL, ABANDONMENT

7.1 User shall, at its own cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute proceedings for the procurement of all necessary consent, approval, or authority from any governmental agency for the sanction of the Agreement and the operations to be carried on by User thereunder. Owner, at its expense, shall assist and support said application or petition and will furnish such information and execute, deliver, and file such instrument or instruments in writing as may be necessary or appropriate to obtain such governmental consent, approval, or authority. User and Owner agree to cooperate fully to procure all such necessary consent, approval, or authority.

7.2 In the event Owner shall be dispossessed by competent public authority of the right to operate upon and maintain any portion of its Joint Trackage, Owner shall have no obligation hereunder to provide tracks for User's use, and User shall have and shall make no claim of any kind, legal or otherwise, against Owner for failure to provide such Joint Trackage for User's use.

7.3 Under the terms hereinafter stated, and to the extent that Owner may lawfully do so, Owner reserves to itself the exclusive right, exercisable at any time during the life of the Agreement without concurrence of User, to elect to abandon all or any part of the Joint Trackage by giving six (6) months' prior written notice to User of its intention so to do.

If, at the time of such election, User is the only party (other than Owner) having the right to use the Joint Trackage, Owner shall, concurrently with its Notice of Abandonment, and to the extent it is legally able to do so, give to User the option to purchase said Joint Trackage or the part or parts thereof to be abandoned at the net liquidation value thereof, on the date of said notice. "Net Liquidation Value" shall mean fair market value of land and salvage value of track components less estimated cost of

removal. User shall have three (3) months from the date of receipt of Owner's notice to exercise its option and shall evidence the exercise of its option by giving Owner written notice thereof. Thereafter User shall immediately make appropriate application to secure all necessary governmental authority for such transaction. Within thirty (30) days following the effective date of all requisite governmental approval of the transaction, User shall pay to Owner the amount of money required to purchase said Joint Trackage to be abandoned at the aforesaid Net Liquidation Value. Upon the receipt of payment of such sum, the Agreement shall terminate as to the part of the Joint Trackage so purchased by User. Contemporaneously with such payment, by instrument or instruments, Owner shall convey and assign by good and sufficient quitclaim deed or deeds, bills of sale or other instruments, all of Owner's right, title, interest, and equity, in and to the Joint Trackage so purchased. Owner agrees that it shall promptly take all necessary action to obtain from the trustees of its mortgages all releases or satisfactions covering the same and shall deliver to User such instruments.

If User fails to exercise the option herein granted within the time and in the manner above specified, Owner may forthwith proceed free of all obligation to User to make appropriate application to secure all necessary governmental authority for such abandonment. User agrees that at such time it will concurrently make application for all necessary governmental authority for abandonment of its right to operate over the Joint Trackage. The Agreement shall terminate as to the section of Joint Trackage so abandoned upon the effective date of such approval by governmental authority.

7.4 Upon termination of the Agreement, or any partial termination, as the applicable case may be, however the same may occur, User shall be released from any and all manner of obligations and shall be deemed to have forever relinquished, abandoned, surrendered, and renounced any and all right possessed by User to operate over that part of the Joint Trackage to which such termination applied, and as to such part, User shall forever release and discharge Owner of and from any and all manner of obligations, claims, demands, causes of action, or suits which User might have, or which might subsequently accrue to User growing out of or in any manner connected with, directly or indirectly, the contractual obligations of Owner under the Agreement, in all events provided, however, the aforesaid relinquishment, abandonment, surrender, renunciation, release, and discharge of User shall not in any case affect any of the rights and obligations of either Owner or User which may have accrued, or liabilities accrued or otherwise, which may have arisen prior to such termination or partial termination. Upon any termination, Owner will remove from Owner's right-of-way any connecting track, and any exclusive facility of User, at User's expense with salvage to be delivered to and retained by User. Upon any partial termination of the Agreement, however the same may occur, the terms and conditions hereof shall continue and remain in full force and effect for the balance of the Joint Trackage.

7.5 Owner and User shall be responsible for and shall bear labor claims of, employee protection payable to, its own respective employees (and employees of its respective affiliated companies) including any amounts that either Owner or User may be required to pay to its own respective employees pursuant to labor protective conditions imposed by the STB.

Section 8. OTHER CONSIDERATIONS

8.1 Nothing in the Agreement contained shall limit the right of Owner to admit other companies to the use of the Joint Trackage or any part thereof on such terms and conditions as are satisfactory to Owner, provided such admittance shall not materially hinder or obstruct the fair and reasonable exercise of the rights granted in the Agreement. User shall have no right to admit any person, firm, or corporation to the use of the Joint Trackage.

8.2 The User cannot assign this agreement or any rights or obligations hereunder without the prior written consent of Owner. Such written consent will also be required where the assignment is to a successor in interest of User by way of merger, consolidation, or sale of substantially all of its assets, divestiture pursuant to an order or decree of a court, or similar corporate reorganization. In the event User becomes under common control with a Class I carrier or a Class I carrier acquires directly or indirectly more than a 20% interest in or the ability to appoint 20% or more of the board of directors of User, Owner may terminate this Agreement on ninety (90) days written notice to User. This Section 8.2 shall not restrict the transfer of shares of stock in User, except to the extent that such shares may not be transferred to or in such a manner as to result in control or the right to control User by a Class I railroad and further provided, any such transferee shall be bound by the restrictions in this Agreement.

8.3 The Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third person to recover by way of damages or otherwise against any of the parties hereto.

8.4 No party to the Agreement shall disclose the terms and conditions of the Agreement to third parties without first obtaining the written consent of all the parties hereto.

8.5 All notices, demands, requests, or submissions which are required or permitted to be given pursuant to the Agreement shall be given by either party to the other in writing by serving the same upon the Vice President of Operations of each company.

8.6 If any covenant or provision of the Agreement not material to the right of User to use the Joint Trackage shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of the Agreement be adjudged void, the parties will make such other arrangements as, under the advice of counsel, will effect the purposes and intent of the Agreement.

8.7 In the event there shall be any conflict between the provisions of this Exhibit "B" and the Agreement, the provisions of the Agreement shall prevail.

8.8 All Section headings are inserted for convenience only and shall not affect any construction or interpretation of the Agreement.

8.9 The termination or expiration of this Agreement will not affect or impair the rights or obligations of either party arising under this Agreement prior to such termination or expiration.